STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO

CASE NOS. 23614-23617

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.

CASE NO. 23775

APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO

CASE NOS. 24018-24020, 24025

APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.

DIVISION CASE NO. 24123
ORDER NO. R-22869-A

GOODNIGHT'S MOTION TO QUASH EMPIRE'S EXPERT DEPOSITION SUBPOENAS

Pursuant to NMSA 1978, §70-2-8 and 19.15.4.16.A NMAC, and Rule 1-045 NMRA, Goodnight Midstream Permian, LLC ("Goodnight"), by and through undersigned counsel, hereby files this motion to quash Empire New Mexico, LLC's, subpoenas for depositions of Thomas E. Tomastik (on August 6, 2024 at 9:00AM MT), of William J. Knights (on August 6, 2024 at 1:00 PM MT), of Dr. James A. Davidson (on August 7, 2024, at 9:00 AM MT), of John McBeath (on

August 7, 2024, at 1:00 PM MT), and of Dr. Larry Lake (on August 8, 2024, at 9:00 AM MT), as noticed in the subpoenas issued by the New Mexico Oil Conservation Commission on July 19, 2024 (the "Deposition Subpoenas") in these matters. In support, Goodnight states as follows:

ARGUMENT

Empire's Deposition Subpoenas should be quashed because Empire failed to make a sufficient showing of good cause and extraordinary circumstances justifying the depositions. In addition, the Deposition Subpoenas unduly burden and unfairly prejudice Goodnight by forcing Goodnight and its experts to spend time and resources to prepare for and submit to depositions instead of finalizing its expert testimony which is due to be filed and served on August 26, 2024, four weeks before the evidentiary hearing in these matters is set to begin. With a full month before the hearing to review and analyze Goodnight's expert testimony and exhibits—and the facts and data they rely on—Empire cannot show an extraordinary circumstance that justifies imposing the burden of making five of Goodnight's witnesses available for depositions mere weeks before their written testimony is due under the June 3, 2024 Scheduling Order ("SO") Empire agreed to.

A. Standard

Pursuant to pursuant to NMSA 1978, Section 70-2-8 and Section 19.15.4.16.A NMAC, "[t]he commission and director or the director's authorized representative shall issue subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown." NMAC § 19.15.4.16.A (emphasis added). The provision further provides that "[t]he director . . . may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing . . . or [] reserve such matters for consideration at a hearing on the merits." *Id*.

Empire's Deposition Subpoenas set depositions and request documents. Rule 1-045(C)(3)(a) NMRA provides that "[o]n timely motion, the court by which a subpoena was issued

shall quash or modify the subpoena if it . . . (iv) subjects a person to undue burden." *Id.* (emphasis added). Empire should have taken "reasonable steps to avoid imposing undue burden or expense" on Goodnight, and because it did not, the Commission should prevent that unfair prejudice to Goodnight by quashing the Deposition Subpoenas. *See* NMRA 1-045(C)(1).

B. **No Extraordinary Circumstances Exist to Require Expert Depositions.**

Empire asserts that "[g]iven the complexity" of the two issues Empire identifies as relevant to the September 23-27 hearing in this matter, "it will promote administrative efficiency, and benefit the Commission and the parties, to allow the parties to develop their respective positions before submitting pre-filed testimony." Mot. at 5 (emphasis added). None of these statements are true and none point to the extraordinary circumstances required for a deposition under Section 19.15.4.16.A NMAC.

The Commission has a discovery procedure that addresses subpoenas. *See* § 19.15.4.16.A NMAC. That procedure does not contemplate depositions of experts in the regular course, even though experts regularly come before the Commission to provide testimony in contested cases. Instead, by convention, in advance of the hearing the parties file written direct testimony, identify exhibits, and do so with sufficient time to file rebuttal testimony, as well. The Scheduling Order Empire agreed to follows this procedure. Empire's arguments fail to set out extraordinary circumstances justifying five prehearing depositions of Goodnight's experts.

Efficiency creates no extraordinary circumstance—indeed, these requested depositions are inefficient because they are redundant of the written direct testimony procedure Empire and Goodnight agreed to in the Scheduling Order and would distract the parties and their witnesses from preparing for the hearing. The Scheduling Order sets August 26, 2024—four weeks before the hearing in these matters is set to begin—as the deadline for the parties to submit written direct testimony from witnesses identified in their July 8, 2024 witness disclosures. *See* SO at 2-3, ¶¶ 4

and 7. Empire's five Deposition Subpoenas seek depositions of Goodnight's experts on the topics identified in Goodnight's witness disclosures. *See,* Deposition Subpoenas, attached as Exhibits A-1 through A-5. Testimony on these topics is *exactly* what the Parties already agreed to exchange on August 26, 2024. Receipt of that testimony on August 26, 2024 provides ample time for Empire and its experts to review and analyze the testimony and to prepare rebuttals and cross examination for the hearing. The Commission's normal deadline for witness disclosures and testimony is one week before a hearing—here, Empire has four. The earlier deadline in the Scheduling Order ensure the parties and their witnesses have ample time to prepare and adjust as necessary before the hearing.

Empire's claim that depositions would benefit the parties creates no extraordinary circumstance. The Deposition Subpoenas seek documents from Goodnight "relied upon" by its experts more than two weeks early. *See* Exh. A-1 at 2. In the Scheduling Order, and on Empire counsel's own proposal, Goodnight and Empire agreed, in connection with serving written testimony to "provide copies of documents that are (1) within the respective party's possession, custody, or control, (2) upon which each party (including their witnesses) relied in preparation for the merits hearing and (3) referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena." SO at 2-3, ¶ 7 (emphasis added). Thus, Empire's subpoena requests ask Goodnight's experts to identify documents "relied upon" before the testimony has even been finalized. Neither does any alleged benefit to the Commission create an extraordinary circumstance meriting the depositions. To the contrary, the depositions unnecessarily burden every other party (and the Commission) and alter the agreed procedure, forcing the witnesses to take time away hearing preparation and requiring two sets of testimony a little more than two weeks apart.

Empire simply points to no "extraordinary circumstances" for these last-minute expert depositions. Instructive to this issue is caselaw discussing the exceptional circumstances under which deposition of a consulting expert is merited in federal court. Multiple cases hold that "'exceptional circumstances' allowing for discovery of a non-testifying expert's opinion exist" when a non-testifying expert has information that cannot be obtained by any other means. *See, e.g.*, *Pinal Creek Grp. v. Newmont Mining Corp*, No. CV-91-1764-PHX-DAE-(LOA), 2006 U.S. Dist. LEXIS 45015, at *18 (D. Ariz. June 30, 2006) (quoting *Hartford Fire Ins. Co. v. Pure Air on the Lake, Ltd. P'ship*, 154 F.R.D. 202, 208 (N.D. Ind. 1993) (citing multiple cases)). In other cases, exceptional circumstances have been shown where a non-testifying expert's report will be used as the basis for a testifying expert's opinion. *Id.* (citations omitted); *c.f. Disidore v. Mail Contractors of Am., Inc*., 196 F.R.D. 410, 417 (D. Kan. 2000) (exceptional circumstances to depose a consulting expert where "the object or condition observed by the non-testifying expert is no longer observable by an expert of the party seeking discovery"). Unlike the circumstances in the above-cited cases where information, data, or opinions would otherwise remain unavailable to a party in advance of a hearing but for the opportunity to depose an expert, here, Empire points to no information it has not, will not, or cannot obtain well in advance of the September evidentiary hearing but for deposing nearly all of Goodnight's witnesses. Empire will already receive Goodnight's expert testimony, their exhibits, and the documents and data they rely on well in advance of the hearing. No extraordinary bases justify the requested depositions.

C. **No Good Cause Exists to Require Goodnight to Provide Expert Testimony Earlier than the Parties' Agreed-To Scheduling Order Deadline.**

Empire suggests good cause exists to depose Goodnight's experts because "Goodnight's witness disclosures and responses to written discovery provide scant information about their expected hearing testimony . . . ." (Mot. at 6). That is a red herring: it misrepresents Goodnight's

disclosures, misinterprets the subpoena power under Section 19.15.4.16.A NMAC, and misconstrues Goodnight's discovery responses. Empire shows no good cause.

Goodnight's witness disclosures and discovery responses met Goodnight's obligations. The Scheduling Order required Goodnight's July 8, 2024, witness disclosures to "disclose [its] witnesses, each witness's particular area of expertise, and identify the subject matter of each witness's anticipated testimony . . ." SO at 2, ¶ 4. Goodnight's witness disclosure did exactly that. Merely because Empire believes it went beyond its disclosure obligation does not establish good cause to depose Goodnight's experts before their written testimony is due.

Empire and Goodnight negotiated the form of the Scheduling Order in April 2024. *See* emails dated April 10, 25, May 1, and 2, attached as Exhibits B-E, respectively. Attached to each email were copies of draft proposed scheduling orders. Empire's April 10 draft scheduling order did not include witness disclosures. *See* Exh. B. On April 25, 2024, Empire provided redlined revisions to the draft scheduling order. *See* Exh. C. Those revisions included the following addition: "The parties shall disclose their witnesses, with a summary of each witness's anticipated testimony, by Friday, June 7, 2024." Exh. C (see attached draft SO, ¶ 2) (emphasis added). The other parties, including Goodnight, pushed back on the "summary" language, providing revisions that Empire agreed to in its subsequent May 1, 2024 version, which provided: "The parties shall disclose their witnesses, each witness's particular area of expertise, and identify the subject matter of each witness's anticipated testimony, by Monday, July 8, 2024." Exh. D (*see* attached draft SO, ¶ 3, showing redlines from other parties accepted by Empire) (emphasis added). Empire provided additional clarifying redlines on May 10, 2024—but again, did not revise this provision at all. *See* Exh. E. In other words, Empire agreed to limit disclosures to the "subject matter" and not a "summary" of each witness's testimony. Goodnight's disclosure provides the subject matter of its

witnesses' testimony – something that Empire does not contest. Thus, there is no good cause to grant Empire a deposition of Goodnights' experts on the basis that Goodnight did not *summarize* the expert testimony.

Empire also asserts that good cause exists for the depositions because Goodnight "objected to every single document request that Empire served[,]" which specifically included Empire's "request[] that Goodnight set forth its experts' opinions. . ." Mot. at 6. This argument fundamentally misconstrues both Goodnight's recent subpoena responses and misinterprets Section 19.15.4.16.A NMAC. Generally, Goodnight objected to each subpoena request consistent with the rulings set forth by the Commission regarding the scope of discovery and the scope of the hearings. *See* Goodnight's Motion to Quash, in Part, Empire's Subpoena Duces Tecum Dated June 3, 2024, filed July 8, 2024. As argued in that motion (and incorporated, here, *see* Rule 1-010(C)), Goodnight's objections on that basis were consistent with the Commission's prior rulings. No rational connection exists between those objections and good cause to depose Goodnight's experts weeks before Goodnight files its full written testimony; those rulings do not create good cause to depart from its agreed Scheduling Order.

Moreover, Empire refers to Goodnight's objection to Request No. 31 as a basis for good cause for the depositions. *See* Goodnight's Responses and Objections to Empire's Subpoena Duces Tecum Dated June 3, 2024, attached as Exhibit F. Request No. 31 asked the following:

> With respect to each person Goodnight may call as an expert witness at hearing, please provide:
>
> a. the name, address, and qualifications of the expert;
> b. the subject matter on which the expert is expected to testify;
> c. the substance of the facts and opinions to which the expert is expected to testify and summary of the grounds for each opinion;
> d. any reports prepared by the expert regarding the pending action;
> e. a list of all publications authored by the witness within the preceding ten (10) years; and

f. a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

See Exh. F, ¶ 31. Empire complains that Goodnight refused to provide responses to subparts b, c, and d. However, Goodnight did provide a response to subpart b based on its witness disclosures that were contemporaneously filed. As to subpart c, Empire asks Goodnight to provide an interrogatory answer, which is fundamentally outside the scope of a subpoena for documents under Section 19.15.4.16.A NMAC and Rules 1-045 and 1-034 NMRA. The request was inappropriate.

As to subparts c and d, Empire will receive a copy of Goodnight's "[w]ritten direct testimony and exhibits . . . [on] Monday, August 26, 2024"—exactly what Empire seeks in its deposition request. The time to complete those "reports" has not yet ripened. Empire, thus, shows no good cause to depart from that schedule due to Goodnight's responses to Empire's document subpoena. Indeed, the departure sought by Empire would cause significant prejudice and undue burden to Goodnight and its experts because their direct testimony has not yet been finalized.

D. **The Deposition Subpoenas Are Unduly Burdensome to Goodnight and Unfairly Prejudice Goodnight's Preparation of Expert Testimony Within the Agreed-Upon Timeline.**

Under the persuasive standards set forth in Rule 1-045 NMRA, a court "shall quash or modify the subpoena if it . . . (iv) subjects a person to undue burden." NMRA 1-045(C)(3)(a)(iv) (emphasis added). For this reason, too, the Deposition Subpoenas must be quashed. As explained above, the Deposition Subpoenas are unduly burdensome to Goodnight, they are unfairly prejudicial to Goodnight's ability to develop and prepare testimony based on the timeline ordered by the Commission, and they represent an attempt by Empire to avoid the agreed testimonial procedure. All these reasons present undue burden and prejudice justifying quashing the subpoena.

As Goodnight noted in its own request for a narrow deposition, "'[t]the discovery process . . . is intended to allow litigants to 'prepare for trial in a manner that will promote the just, speedy,

and inexpensive determination of the action....'. . . ." *Baez-Eliza v. Instituto Psicoterapeutico De P.R.*, No. 09-1990 (SEC), 2011 U.S. Dist. LEXIS 937, at *20 (D.P.R. Jan. 5, 2011). Empire's broad, redundant, inefficient and prejudicial Deposition Subpoenas violate this principle aim of discovery and should be quashed.

CONCLUSION

For these reasons, Goodnight respectfully requests that the Commission quash Empire's Deposition Subpoenas, and for such other and further relief as the Commission may deem appropriate and necessary.

DATED: August 2, 2024

Respectfully submitted,

HOLLAND & HART LLP

/s/ Nathan R. Jurgensen

By: _____

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ATTORNEYS FOR GOODNIGHT MIDSTREAM PERMIAN, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT A-1

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN RE: APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**COMM. CASE NO. 24123**
APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 23614-23617**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.	**DIV. CASE NO. 23775**
APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 24018-24020, 24025**

SUBPOENA

To: Thomas E. Tomastik
c/o Holland & Hart LLP
Attn: Michael H. Feldewert
Adam G. Rankin
Nathan R. Jurgensen
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nrjurgensen@hollandhart.com
pmvance@hollandhart.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501

Date: August 6, 2024 Time: 9:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Goodnight Midstream Permian, LLC's July 8, 2024, Witness Disclosure (the "Goodnight Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Goodnight Witness Disclosure; and

2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Goodnight Witness Disclosure

to produce these documents at the offices of Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501, contemporaneous with the taking of your deposition.

This subpoena is issued on application of Empire New Mexico, LLC, through its attorneys of record.

Dated this 19th day of July 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____
Gerasimos Razatos, Acting Division Director

Date: July 19, 2024

EXHIBIT A-2

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN RE: APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**COMM. CASE NO. 24123**
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SUBPOENA

To: William J. Knights
c/o Holland & Hart LLP
Attn: Michael H. Feldewert
Adam G. Rankin
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YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501

Date: August 6, 2024 Time: 1:00 p.m.

to testify at the taking of a deposition regarding the topics attributed to you in Goodnight Midstream Permian, LLC's July 8, 2024, Witness Disclosure (the "Goodnight Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Goodnight Witness Disclosure; and

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Dated this 19th day of July, 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____
Gerasimos Razatos, Acting Division Director

Date: July 19, 2024

EXHIBIT A-3

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

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APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 23614-23617**
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APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 24018-24020, 24025**

SUBPOENA

To: Dr. James A. Davidson
c/o Holland & Hart LLP
Attn: Michael H. Feldewert
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Place: Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501

Date: August 7, 2024 Time: 9:00 a.m.

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Dated this 19th day of July 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____
Gerasimos Razatos, Acting Division Director

Date: July 19, 2024

EXHIBIT A-4

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

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APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 23614-23617**
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APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO.	**DIV. CASE NOS. 24018-24020, 24025**

SUBPOENA

To: John McBeath
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Place: Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501

Date: August 7, 2024 Time: 1:00 p.m.

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This subpoena is issued on application of Empire New Mexico, LLC, through its attorneys of record.

Dated this 19th day of July 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____
Gerasimos Razatos, Acting Division Director

Date: July 19, 2024

EXHIBIT A-5

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN RE: APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**COMM. CASE NO. 24123**
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SUBPOENA

To: Dr. Larry Lake
c/o Holland & Hart LLP
Attn: Michael H. Feldewert
Adam G. Rankin
Nathan R. Jurgensen
Paula M. Vance
Post Office Box 2208
Santa Fe, NM 87504
505-998-4421
505-983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com
nrjurgensen@hollandhart.com
pmvance@hollandhart.com

YOU ARE HEREBY COMMANDED pursuant to NMSA 1978, §70-2-8 and Rule 19.15.4.16.A NMAC TO APPEAR as follows:

Place: Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501

Date: August 8, 2024 Time: 9:00 a.m.

to testify at the taking of a deposition regarding the topics attributed to you in Goodnight Midstream Permian, LLC's July 8, 2024, Witness Disclosure (the "Goodnight Witness Disclosure"). The deposition will be recorded by a certified court reporter and videotaped. This deposition testimony may be used at hearing for any and all purposes permitted by the New Mexico Oil Conservation Commission.

YOU ARE ALSO COMMANDED pursuant to Section 70-2-8 and Rule 19.15.4.16.A to bring with you the following document(s) or object(s):

1. Any documents you reviewed or relied upon to develop your opinions on the subject matter set forth in the Goodnight Witness Disclosure; and

2. Any reports or analyses prepared by you, or at your direction, regarding your opinions on the subject matter set forth in the Goodnight Witness Disclosure

to produce these documents at the offices of Hinkle Shanor LLP, 218 Montezuma Ave., Santa Fe, New Mexico, 87501, contemporaneous with the taking of your deposition.

This subpoena is issued on application of Empire New Mexico, LLC, through its attorneys of record.

Dated this 19th day of July, 2024.

NEW MEXICO OIL CONSERVATION COMMISSION

BY: _____
Gerasimos Razatos, Acting Division Director

Date: July 19, 2024

EXHIBIT B

From: Dana Hardy <DHardy@hinklelawfirm.com>
Sent: Wednesday, April 10, 2024 8:35 PM
To: Adam Rankin; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov)
Cc: Sharon T. Shaheen; Ernest Padilla; jessek.tremaine@emnrd.nm.gov; Dana Hardy
Subject: RE: Goodnight/Empire: Preliminary Agenda - OCC Meeting on April 11, 2024
Attachments: Commission applications - Proposed Scheduling Order (01693310xB76D6)(1617459.1).docx

External Email

Adam and Chris,

I'm attaching a proposed scheduling order. Please let us know if this works.

Thanks,
Dana

Dana S. Hardy
Partner
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 930-5702 direct
(505) 982-8623 facsimile
dhardy@hinklelawfirm.com

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Wednesday, April 10, 2024 9:31 AM
To: Dana Hardy <DHardy@hinklelawfirm.com>; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov) <Chris.Moander@emnrd.nm.gov>
Cc: Sharon T. Shaheen <sshaheen@montand.com>; Ernest Padilla <PadillaLawNM@outlook.com>; jessek.tremaine@emnrd.nm.gov
Subject: RE: Goodnight/Empire: Preliminary Agenda - OCC Meeting on April 11, 2024

Dana and Chris,

I've been able to poll our witnesses. We propose the following one-week slots for a hearing before the OCC on the schedule outlined in my previous email.

- August 26-30
- September 16-20 (OCC regular meeting 9/19)

- September 23-27

The Commission is scheduled for a regular meeting on 9/19, but we should be able to work around that meeting on that day. I understand the PFAS rulemaking is likely going to go in the October/November timeframe, so there shouldn't be a timing conflict over that issue.

Let me know if any of these proposed dates work for Empire and the Division and whether the sequencing outlined below works.

Best,
Adam

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Adam Rankin
Sent: Monday, April 8, 2024 6:10 PM
To: Dana Hardy <DHardy@hinklelawfirm.com>
Cc: Sharon T. Shaheen <sshaheen@montand.com>; Ernest Padilla <PadillaLawNM@outlook.com>; jessek.tremaine@emnrd.nm.gov; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov) <Chris.Moander@emnrd.nm.gov>
Subject: Goodnight/Empire: Preliminary Agenda - OCC Meeting on April 11, 2024

Dana,

As discussed, we propose a scheduling order that sets out the following:

- Last day to serve subpoenas/discovery – 45 days in advance of hearing (TBD);
- One-week hearing before the Commission (dates TBD and subject to completion of discovery and resolution of discovery objections in advance of the hearing);
- 4 weeks in advance of hearing file direct testimony and prehearing statements in the following cases:
  - 24018-24027 (Empire Cases to Revoke Injection Authority)
    - 24018-24020, 24025 (Inside EMSU)
    - 24021-24024, 24026-24027 (Outside EMSU) [subject to motion to stay cases pending resolution of "EMSU" cases – to be filed]
  - 23775 (Andre Dawson Rate Increase)
  - 24123 (Piazza De Novo)
  - 24277-24278 (Applications Amend to EMSU Orders)
- 2 weeks in advance of hearing file:
  - Objections to direct testimony and exhibits
  - Rebuttal testimony and exhibits in all cases

Can you let us know if this framework is acceptable to Empire?

Chris and Jesse, does this work for the Division?

We are waiting for confirmation on witness availability, but I am asking for dates in late August and September. I hope to have available dates before the status conference on Thursday.

Best,
Adam

Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Dana Hardy <DHardy@hinklelawfirm.com>
Sent: Thursday, April 4, 2024 3:07 PM
To: Adam Rankin <AGRankin@hollandhart.com>
Cc: Sharon T. Shaheen <sshaheen@montand.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Subject: FW: Preliminary Agenda - OCC Meeting on April 11, 2024

External Email

Hi Adam,

We have an Empire/Goodnight status conference next week, and we haven't discussed a proposal for the hearing. Can you send me Goodnight's proposal or let me know if you have time to discuss tomorrow or on Monday? I'm travelling for meetings on Tuesday and Wednesday.

Thanks,
Dana

Dana S. Hardy
Partner
Hinkle Shanor LLP
218 Montezuma
Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 930-5702 direct
(505) 982-8623 facsimile
dhardy@hinklelawfirm.com

From: Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>
Sent: Thursday, April 4, 2024 2:49 PM
To: Griego, Sara, EMNRD <SaraC.Griego@emnrd.nm.gov>; A. Blair Dunn Esq. (abdunn@ablairdunn-esq.com) <abdunn@ablairdunn-esq.com>; Adam Rankin <AGRankin@hollandhart.com>; Alex Fleming <AFleming@walshwatts.com>; Alison Denner <ADenner@contango.com>; Marks,Allison <amarks@slo.state.nm.us>; Repka, Angie <angie.repka@exxonmobil.com>; Anna M. Williamson (awilliamson@cilawnm.com) <awilliamson@cilawnm.com>; abiernoff@slo.state.nm.us; Arianna Evans (Arianna.Evans@dvn.com) <Arianna.Evans@dvn.com>; Balch (balch@prrc.nmt.edu) <balch@prrc.nmt.edu>; Ryan, Beth (LDZX)

<Beth.Ryan@conocophillips.com>; bdwilliams@marathonoil.com; (ballen@sesi-nm.com) <ballen@sesi-nm.com>; Brandon Hajny <BHajny@cilawnm.com>; Powell, Brandon, EMNRD <Brandon.Powell@emnrd.nm.gov>; Brian Hall (bhall@marathonoil.com) <bhall@marathonoil.com>; chart@catenares.com; Marathon Oil Corporation (cfrice@marathonoil.com) <cfrice@marathonoil.com>; Chelsey Green (Chelsey.green@dvn.com) <Chelsey.green@dvn.com>; Chris Killion (ckillion@modrall.com) <ckillion@modrall.com>; Chris Leyendecker <Chris@avantnr.com>; Christian Combs <ccombs@taprk.com>; D Hawthorne (dhawthorne@ntglobal.com) <dhawthorne@ntglobal.com>; D. McLeod (dmcleod@petrogulf.com) <dmcleod@petrogulf.com>; (dale@capstoneoil.com) <dale@capstoneoil.com>; Dan Dunkelberg (dan@trinityoilfieldservices.com) <dan@trinityoilfieldservices.com>; Dana Hardy <DHardy@hinklelawfirm.com>; Dana Strang (dvstrang@slo.state.nm.us) <dvstrang@slo.state.nm.us>; Darin Savage <darin@abadieschill.com>; (dboneau@pvtnetworks.net) <dboneau@pvtnetworks.net>; Dakota Nahm <Dakota@lario.net>; Dave Sessions (dave@abadieschill.com) <dave@abadieschill.com>; David Gallegos (dgallegos@slo.state.nm.us) <dgallegos@slo.state.nm.us>; McClure, Dean, EMNRD <Dean.McClure@emnrd.nm.gov>; Deana M. Bennett <dmb@modrall.com>; Debbie McKelvey (debmckelvey@earthlink.net) <debmckelvey@earthlink.net>; Moellenberg, Dalva L. <dlm@gknet.com>; Don Johnson <djohnson@fmellc.com>; Andrew Cloutier <ACloutier@hinklelawfirm.com>; Fuge, Dylan, EMNRD <Dylan.Fuge@emnrd.nm.gov>; Earl De Brine (edebrine@modrall.com) <edebrine@modrall.com>; Elise Albosta <elise@abadieschill.com>; Elizabeth Hampton (Liz.Hampton@thomsonreuters.com) <Liz.Hampton@thomsonreuters.com>; Emily Wirth (emily.wirth@cehmm.org) <emily.wirth@cehmm.org>; Ernest Padilla <PadillaLawNM@outlook.com>; Faith Crosby (fcrosby@slo.state.nm.us) <fcrosby@slo.state.nm.us>; Duvall, Farley (MRO) <fduvall@marathonoil.com>; Fred Verner (fredverner@chevron.com) <fredverner@chevron.com>; gbloom <gbloom@slo.state.nm.us>; Heather Glaze (Heather.Glaze@dvn.com) <Heather.Glaze@dvn.com>; Helen Trujillo (htrujillo@rlbayless.com) <htrujillo@rlbayless.com>; Scott Hall <shall@logosresourcesllc.com>; jsullivan@slo.state.nm.us; Jaclyn McLean <JMcLean@hinklelawfirm.com>; Laning, James B <James_Laning@oxy.com>; James Parrot <JParrot@bwenergylaw.com>; James Rodgers (jcrodgers@marathonoil.com) <jcrodgers@marathonoil.com>; Jamie Allen (jallen@modrall.com) <jallen@modrall.com>; (jan.wooldridge@dvn.com) <jan.wooldridge@dvn.com>; Broussard, Jeff (MRO) <jbroussard1@marathonoil.com>; Jeff Walla (Jeff.walla@dvn.com) <Jeff.walla@dvn.com>; Jennifer Bradfute (jbradfute@marathonoil.com) <jbradfute@marathonoil.com>; Jenny Edwards (j.edwards@leaenergy.com) <j.edwards@leaenergy.com>; Jenny Harms (Jenny.harms@dvn.com) <Jenny.harms@dvn.com>; Jerry Goedert <JGoedert@petrogulf.com>; Redfern, Jerry <jredfern@capitalandmain.com>; jamesbruc@aol.com; Griswold, Jim, EMNRD <Jim.Griswold@emnrd.nm.gov>; Winchester, Jim <jimwinchester@ipanm.org>; Jimmy D. Carlile (jimmyc@forl.com) <jimmyc@forl.com>; JM Cerdi (jmcerdi@cox.net) <jmcerdi@cox.net>; Rittenhouse, Joby (LDZX) <Joby.Rittenhouse@conocophillips.com>; John Smitherman (jrs@nmoga.org) <jrs@nmoga.org>; John Underwood (johnU@heycoenergy.com) <johnU@heycoenergy.com>; Winscott, John <jwinscott@slo.state.nm.us>; Jon Goldstein (jgoldstein@edf.org) <jgoldstein@edf.org>; Jonathan Filbert <jfilbert@matadorresources.com>; Jordan Kessler (Jordan_Kessler@eogresources.com) <Jordan_Kessler@eogresources.com>; (kjones@riceswd.com) <kjones@riceswd.com>; luck.kaitlyn@gmail.com; kaiya@abadieschill.com; Katie Nguyen (Katie.Nguyen@rlicorp.com) <Katie.Nguyen@rlicorp.com>; Rack Energy Services LLC <rackenergyservices@yahoo.com>; Lee Zink <lzink@fmellc.com>; Lowe, Leonard, EMNRD <Leonard.Lowe@emnrd.nm.gov>; Ortiz, Lisa (LDZX) <Lisa.Ortiz@conocophillips.com>; Liz Klein (lklein@3bearllc.com) <lklein@3bearllc.com>; Lois Salazar (Louis.C.Salazar@conocophillips.com) <Louis.C.Salazar@conocophillips.com>; MarcoG777@yahoo.com; marcus@abadieschill.com; Maren Latimer (Maren.latimer@nmoilpatch.com) <Maren.latimer@nmoilpatch.com>; mcox@logosresourcesllc.com; Marla Shoats (mshoats@advocate4nm.org) <mshoats@advocate4nm.org>; Martin Joyce (mjoyce@pvtn.net) <mjoyce@pvtn.net>; Mary Feldblum (feldblum2487@gmail.com) <feldblum2487@gmail.com>; matthias.sayer@nglep.com; Mauri Hinterlong (mhinterlong@heycoenergy.com) <mhinterlong@heycoenergy.com>; Michael Condon <mjc@gallegoslawfirm.net>; Michael Feldewert (MFeldewert@hollandhart.com) <MFeldewert@hollandhart.com>; mdrodriguez@taprk.com; Michael Rohr (michael@trinity-ei.com) <michael@trinity-ei.com>; Mike Dennis (mdennis3082q@gmail.com) <mdennis3082q@gmail.com>; Mike McMillan (mmcmillan@slo.state.nm.us) <mmcmillan@slo.state.nm.us>; Mitch Krakauskas (mkrakauskas@stratanm.com) <mkrakauskas@stratanm.com>; Morgan Chavez (morganchavez33@gmail.com) <morganchavez33@gmail.com>; Natalie Silva (NSilva@earthstoneenergy.com) <NSilva@earthstoneenergy.com>; Ocean Munds-Dry <omundsdry@civiresources.com>; (rel@dfn.com) <rel@dfn.com>; Patton.Eagle@contango.com; Paul Able (Paul.Able@ENRtechnical.com) <Paul.Able@ENRtechnical.com>; Kautz, Paul,

EMNRD <paul.kautz@emnrd.nm.gov>; Paula M. Vance <PMVance@hollandhart.com>; Pete Roos (Pete.Roos@bridgerphotonics.com) <Pete.Roos@bridgerphotonics.com>; Philana Thompson (pthompson@merrion.bz) <pthompson@merrion.bz>; Goetze, Phillip, EMNRD <phillip.goetze@emnrd.nm.gov>; Rebecca Deal (Rebecca.deal@dvn.com) <Rebecca.deal@dvn.com>; reid.marley@gmail.com; Robbie Zimmerman (robbie@trinity-ei.com) <robbie@trinity-ei.com>; rswann@catenares.com; Higgin, Roslyn, ENV <Roslyn.Higgin@env.nm.gov>; Ryan Davis (rdavis@merrion.bz) <rdavis@merrion.bz>; Gyllenband, Ryan <mrgyllenband@marathonoil.com>; S Gomez (sgomez@logosresourcesllc.com) <sgomez@logosresourcesllc.com>; Sabre Brothers <sabre@abadieschill.com>; Samantha Fox (sfox@B3insight.com) <sfox@B3insight.com>; Samantha Romero (srromero@slo.state.nm.us) <srromero@slo.state.nm.us>; scox1@marathonoil.com; Sarah Byrne <SByrne@concho.com>; Sarah Mitchell (Sarah_Mitchell@eogresources.com) <Sarah_Mitchell@eogresources.com>; Sean Marshall <Sean.Marshall@cdevinc.com>; Sharon T. Shaheen <sshaheen@montand.com>; Shayda Omoumi (Shayda.Omoumi@dvn.com) <Shayda.Omoumi@dvn.com>; Sheila Mallory (smallory@blm.gov) <smallory@blm.gov>; Shelly Albrecht (shelly@avantnr.com) <shelly@avantnr.com>; (stan.phillips@apachecorp.com) <stan.phillips@apachecorp.com>; Richard, StephanieGarcia <sgarciarichard@slo.state.nm.us>; Stephen Robertson PBPA <Stephen@PBPA.info>; spollock@forl.com; Stewart, Sunalei <C-SunaleiStewart@state.nm.us>; Tarin Nix (tnix@slo.state.nm.us) <tnix@slo.state.nm.us>; Teresa Pacheco <tpacheco@montand.com>; Tessa Wuertz (Tessa.Wuertz@bridgerphotonics.com) <Tessa.Wuertz@bridgerphotonics.com>; Thomas Engler (Thomas.engler@nmt.edu) <Thomas.engler@nmt.edu>; THOMAS MCKINNEY <stormycce@gmail.com>; Tiffany Polak <Tiffany_Polak@oxy.com>; Tiffany Sarantinos (tiffany@avantnr.com) <tiffany@avantnr.com>; Tom Singer (singer@westernlaw.org) <singer@westernlaw.org>; Travis Everson <travis@earthstoneenergy.com>; Trent Colan (Trent.Colan@rlicorp.com) <Trent.Colan@rlicorp.com>; Tyra Feil (Tyra.Feil@duganproduction.com) <Tyra.Feil@duganproduction.com>; V. Ware (vware@matadorresources.com) <vware@matadorresources.com>; Vanessa Fields <vfields@logosresourcesllc.com>; wjones@titusoil.com; William E. Zimsky (bill@abadieschill.com) <bill@abadieschill.com>; Yarithza Pena (yarithza.pena@modrall.com) <yarithza.pena@modrall.com>; Perez, Yolanda <Yolanda_Perez@oxy.com>; dl_pburegulatory@coterra.com; Stephen.flaherty@coterra.com; Phillip Levasseur <Phillip.Levasseur@coterra.com>; Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Cameron Ford <Cameron@westwindeh.com>; Michael Rohr <Michael@westwindeh.com>; Jennifer Bradfute <jennifer@bradfutelaw.com>; David@Lario.net; Dakota Nahm <Dakota@lario.net>; Rubin, Daniel <drubin@nmag.gov>
Subject: RE: Preliminary Agenda - OCC Meeting on April 11, 2024

> Some people who received this message don't often get email from sheila.apodaca@emnrd.nm.gov. Learn why this is important

Attached please find the Preliminary Agenda for the OCC Meeting on April 11, 2024.

Sheila Apodaca
Law Clerk
EMNRD-Oil Conservation Division
1220 South St. Francis Drive, 3rd Floor
Santa Fe, NM 87505
505-699-8358
sheila.apodaca@emnrd.nm.gov

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENT OIL POOL WITHIN THE EUNICE MONUMENT SOUTH UNIT AREA, LEA COUNTY, NEW MEXICO.	**CASE NO. 24277**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO.	**CASE NO. 24278**
APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO	**CASE NOS. 23614-23617**
APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO	**CASE NOS. 24018-24027**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.	**CASE NO. 23775**

[PROPOSED] PRE-HEARING ORDER

This Pre-Hearing Order follows the status conference held on April 11, 2024 before the Oil Conservation Commission. The above-referenced matters shall proceed as follows:

1. These matters will be heard and evidence presented on [DATE]-[DATE 5 DAYS LATER] beginning at 9 am.

2. The last day for issuance of subpoenas shall be 60 days in advance of the hearing.

3. Written direct testimony and exhibits shall be filed 4 weeks prior to the hearing.

4. Dispositive motions shall be filed 4 weeks prior to the hearing, answers will be due 3 weeks prior to the hearing, and replies will be due 1 week prior to the hearing.

5. Other motions, including motions to compel, shall be filed 6 weeks prior to the hearing and answers will be due 5 weeks prior to the hearing. No replies shall be filed. Rulings shall be made on the papers without hearing.

6. Pre-hearing statements shall be filed 2 weeks prior to the hearing and shall include a list of issues common to all of the applications and a list of issues unique to any specific application.

Commented [DH1]: Adam - we think it makes sense to file the prehearing statements once we have each other's direct testimony so we can set out the issues.

7. Rebuttal testimony and exhibits shall be filed 2 weeks prior to the hearing.

8. Objections to testimony and exhibits shall be filed 1 week prior to the hearing.

9. Hearing, if any, on pending dispositive motions shall be held at the start of the evidentiary hearing.

DONE at Santa Fe, New Mexico on the _____ day of _____, 2024.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

_____
Greg Bloom, Commissioner

_____
William Ampomah, Commissioner

_____
Dylan Fuge Chair

EXHIBIT C

From: Sharon T. Shaheen <sshaheen@montand.com>
Sent: Thursday, April 25, 2024 5:33 PM
To: 'Moander, Chris, EMNRD'; Adam Rankin; Dana Hardy (dhardy@hinklelawfirm.com); Ernest Padilla
Cc: Tremaine, Jesse, EMNRD
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order
Attachments: Goodnight-Empire Scheduling Order - Empire redlines 3 042224 (01695510-4xB76D6).DOCX

External Email

All, we have taken another crack at the prehearing order. Please see attached in preparation for our call tomorrow.

Thanks,
Sharon

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

MONTGOMERY & ANDREWS LAW FIRM

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Monday, April 15, 2024 1:56 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All,

Sorry for this coming out five minutes before the meeting, but to expedite things I took the liberty of calculating out the various dates in Dana's proposed order. I prefer we get dates-certain into the order so there is no confusion about what is due and when.

See you all shortly.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, April 11, 2024 1:50 PM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Chris, I will try to get the group comments by the call but likely won't be able to get you firm redlines. I will have to follow up with those after the call so I can confer with Goodnight.

Get Outlook for iOS

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Thursday, April 11, 2024 1:40:35 PM
To: Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Adam Rankin <AGRankin@hollandhart.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: Goodnight/Empire Scheduling Order
When: Monday, April 15, 2024 2:00 PM-3:00 PM.
Where: Microsoft Teams Meeting

External Email

I ask that folks circulate their edits, or preferable a single document edited by all, prior to the meeting. I think that will expedite matters.

If anyone has a conflict with this, please pitch with new times. It appears Adam, Dana, and I have flexibility so input from Ernie and Sharon would be helpful.

Chris

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 236 095 606 357

Passcode: Pt9XgQ

Dial-in by phone

+1 505-312-4308,,51708751# United States, Albuquerque

Find a local number

Phone conference ID: 517 087 51#

For organizers: Meeting options | Reset dial-in PIN

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENT OIL POOL WITHIN THE EUNICE MONUMENT SOUTH UNIT AREA, LEA COUNTY, NEW MEXICO.	**CASE NO. 24277**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO.	**CASE NO. 24278**
APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO	**CASE NOS. 23614-23617**
APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO	**CASE NOS. 24018-24027**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.	**CASE NO. 23775**

[PROPOSED] PRE-HEARING ORDER

This Pre-Hearing Order follows the status conference held on ~~April 11~~May 9, 2024 before the Oil Conservation Commission. The above-referenced matters shall proceed as follows:

1. These matters will be heard and evidence presented on ~~[DATE] [DATE 5 DAYS LATER]~~ September 23-27, 2024 beginning at 9 am.

2. The parties shall disclose their witnesses, with a summary of each witness's anticipated testimony, by Friday, June 7, 2024.

~~2.~~3. The last day for issuance of subpoenas shall be ~~60 days in advance of the hearing Thursday~~Monday, July 1~~2~~5, 2024.

~~3.~~4. Written direct testimony and exhibits shall be filed ~~4 weeks prior to the hearing.~~ Monday, August 26, 2024. The parties agree to provide copies of documents that are within the respective party's possession, custody, or control and expressly referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena.

~~4.~~5. Dispositive motions shall be filed no later than ~~4 weeks prior to the hearing~~Monday, August 26, 2024, response~~answer~~s will be due ~~3~~ 2 weeks after service of the dispositive motion and, in any event, no later than~~prior to the hearing~~ Monday, September 9~~2~~, 2024, and replies will be due 1 week after service of the response and, in any event, no later than ~~prior to the hearing~~ Monday, September 16, 2024.

~~5.~~6. Other motions, including motions to compel, shall be filed ~~6 weeks prior to the hearing~~no later than ~~Monday~~Thursday, August 1~~2~~, 2024. ~~and answers~~ Responses will be due 1 week after service of the motion and, in any event, no later than ~~5 weeks prior to the hearing Mon~~Thursday, August 8~~19~~, 2024. No replies shall be filed. Rulings shall be made on the papers without hearing, unless requested by the Commission.

~~6.~~7. Pre-hearing statements shall be filed Monday, September 9, 2024~~2 weeks prior to the hearing~~ and shall include a list of issues common to all of the applications and a list of issues unique to any specific application. ~~Monday, September 9, 2024~~

~~7.~~8. Rebuttal testimony and exhibits shall be filed ~~2 weeks prior to the hearing.~~ Monday, September 9, 2024. The parties agree to provide copies of documents that are within the respective

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Commented [STS1]: This timing will enable the Commission to make its decision at the August 15 regularly scheduling hearing date.

Commented [DH2]: Adam - we think it makes sense to file the prehearing statements once we have each other's direct testimony so we can set out the issues.

party's possession, custody, or control and expressly referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena.

~~8.~~9. Objections to testimony and exhibits shall be filed ~~1 week prior to the hearing.~~ Monday, September 16, 2024.

~~9.~~10. Hearing, if any, on pending dispositive motions shall be held at the start of the evidentiary hearing.

DONE at Santa Fe, New Mexico on the _____ day of _____, 2024.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

_____
Greg Bloom, Commissioner

_____
William Ampomah, Commissioner

_____
Dylan Fuge, Chair

EXHIBIT D

From: Sharon T. Shaheen <sshaheen@montand.com>
Sent: Wednesday, May 1, 2024 1:44 PM
To: Adam Rankin; Moander, Chris, EMNRD; 'Dana Hardy (dhardy@hinklelawfirm.com)'; 'Ernest Padilla'
Cc: Tremaine, Jesse, EMNRD
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order
Attachments: Goodnight-Empire Scheduling Order - OCD Edits 4.29.24_AGR-eds 4.30.24_Empire edits 5.1.24 (01695510-7xB76D6).DOCX

External Email

All, Empire has a few additional revisions to the latest draft. Please see attached.

Thanks,
Sharon

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

MONTGOMERY & ANDREWS LAW FIRM

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Wednesday, May 1, 2024 8:35 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Sharon T. Shaheen <sshaheen@montand.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

Good morning. Attached are additional suggested edits.

Adam Rankin

Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Monday, April 29, 2024 1:37 PM
To: Sharon T. Shaheen <sshaheen@montand.com>; Adam Rankin <AGRankin@hollandhart.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

External Email

All,

Here is my updated version of the scheduling order Sharon circulated last week.

I did bump the witness deadline to the Monday after the 4th of July as I expect none of us will be in the office on 7/5/24.

Chris

From: Sharon T. Shaheen <sshaheen@montand.com>
Sent: Friday, April 26, 2024 2:04 PM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; 'Adam Rankin' <AGRankin@hollandhart.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All, my 1:30 is running a little over, but I will join shortly. Please go ahead without me in the meantime.

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

From: Sharon T. Shaheen
Sent: Thursday, April 25, 2024 5:33 PM
To: 'Moander, Chris, EMNRD' <Chris.Moander@emnrd.nm.gov>; Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All, we have taken another crack at the prehearing order. Please see attached in preparation for our call tomorrow.

Thanks,
Sharon

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Monday, April 15, 2024 1:56 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All,

Sorry for this coming out five minutes before the meeting, but to expedite things I took the liberty of calculating out the various dates in Dana's proposed order. I prefer we get dates-certain into the order so there is no confusion about what is due and when.

See you all shortly.

Chris

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, April 11, 2024 1:50 PM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Chris, I will try to get the group comments by the call but likely won't be able to get you firm redlines. I will have to follow up with those after the call so I can confer with Goodnight.

Get Outlook for iOS

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Thursday, April 11, 2024 1:40:35 PM
To: Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Adam Rankin <AGRankin@hollandhart.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: Goodnight/Empire Scheduling Order
When: Monday, April 15, 2024 2:00 PM-3:00 PM.
Where: Microsoft Teams Meeting

External Email

I ask that folks circulate their edits, or preferable a single document edited by all, prior to the meeting. I think that will expedite matters.

If anyone has a conflict with this, please pitch with new times. It appears Adam, Dana, and I have flexibility so input from Ernie and Sharon would be helpful.

Chris

_____

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 236 095 606 357

Passcode: Pt9XgQ

Dial-in by phone

+1 505-312-4308,,51708751# United States, Albuquerque

Find a local number

Phone conference ID: 517 087 51#

For organizers: Meeting options | Reset dial-in PIN

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENT OIL POOL WITHIN THE EUNICE MONUMENT SOUTH UNIT AREA, LEA COUNTY, NEW MEXICO.	**CASE NO. 24277**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO.	**CASE NO. 24278**
APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO	**CASE NOS. 23614-23617**
APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO	**CASE NOS. –24018-24027**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.	**CASE NO. 23775**

[PROPOSED] PRE-HEARING ORDER

This Pre-Hearing Order follows the status conference held on May 9, 2024 before the Oil Conservation Commission. The above-referenced matters shall proceed as follows:

1. These matters will be heard and evidence presented on September 23-27, 2024 beginning at 9 a.m. If additional hearing days are needed the Commission and parties will confer on additional hearing dates.

2. Goodnight Midstream shall file its motion regarding scope of the hearing no later than May 23, 2024; responses shall be filed by June 6, 2024; and replies shall be filed by June 13, 2024.

~~2.~~3. The parties shall disclose their witnesses, each witness's particular area of expertise, ~~with a summary~~and identify the subject matter of each witness's anticipated testimony, by ~~Friday~~Monday, July 8~~ne 7~~, 2024.

~~3.~~4. The last day for issuance of subpoenas, including subpoenas for witness depositions in advance of hearing, shall be Monday, July ~~15~~19, 2024.

5. Other motions, including ~~M~~motions to compel, shall be filed by Monday, August 12, 2024. Responses will be due by ~~Monday~~Thursday, August 22~~19~~, 2024. Replies shall be filed by August 30, 2024. Rulings shall be made pursuant to 19.15.4.16.C NMAC.

~~4.~~6. Written direct testimony and exhibits shall be filed Monday, August 26, 2024. The parties agree to provide copies of documents ~~that are within the respective party's possession, custody, or control~~ that are within the respective party's possession, custody, or control and upon which each party (including their witnesses) relied in preparation for the merits hearing and those documents ~~expressly~~ referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena.

~~5.~~7. Dispositive motions shall be filed no later than Monday, August 26, 2024~~, .~~. ~~responses~~ Responses will be due 2 weeks after service of the dispositive motion and, in any event, no later than Monday, September 9, 2024~~, .~~ ~~and r~~Replies will be due 1 week after service of the response and, in any event, no later than Monday, September 16, 2024.

~~6. Other motions, including motions to compel, shall be filed no later than Thursday, August 1, 2024. Responses will be due 1 week after service of the motion and, in any event, no~~

~~later than Thursday, August 8, 2024. No replies shall be filed. Rulings shall be made on the papers without hearing, unless requested by the Commission.~~

~~7.~~8. Pre-hearing statements shall be filed Monday, September 9, 2024 and shall include a list of issues common to all of the applications and a list of issues unique to any specific application.

~~8.~~9. Rebuttal testimony and exhibits shall be filed Monday, September 9, 2024. The parties agree to provide copies of documents that are within the respective party's possession, custody, or control and upon which each party (including their witnesses) relied in preparation for the merits hearing and those documents ~~expressly~~ referenced in the ~~direct~~rebuttal testimony and exhibits within one week of a request for such documents, without a subpoena.~~parties agree to provide copies of documents that are within the respective party's possession, custody, or control and expressly referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena.~~

~~9.~~10. Objections to testimony and exhibits shall be filed no later than Monday, September 16, 2024.

11. Hearing, if any, on any unresolved pending dispositive motions shall be held at the start of the evidentiary hearing.

~~10.~~12. Extensions to the foregoing deadlines and dates, including hearing continuances, may be granted by the Division Director by agreement of the parties or on a motion for good cause shown.

DONE at Santa Fe, New Mexico on the _____ day of _____, 2024.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Greg Bloom, Commissioner

William Ampomah, Commissioner

Dylan Fuge, Chair

31963642_v1

EXHIBIT E

From: Sharon T. Shaheen <sshaheen@montand.com>
Sent: Thursday, May 2, 2024 2:28 PM
To: 'Moander, Chris, EMNRD'; Adam Rankin; 'Dana Hardy (dhardy@hinklelawfirm.com)'; 'Ernest Padilla'
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order
Attachments: Goodnight-Empire Scheduling Order - sts redline 050224 (01697577xB76D6).DOCX

Follow Up Flag: Follow up
Flag Status: Completed

External Email

All, please see attached for Empire's revisions for the purpose of clarity.

Sharon T. Shaheen
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

MONTGOMERY & ANDREWS LAW FIRM

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Wednesday, May 1, 2024 2:24 PM
To: Sharon T. Shaheen <sshaheen@montand.com>; 'Adam Rankin' <AGRankin@hollandhart.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All,

Please see the attached. I did make a small edit to Paragraph 11 for clarity. If there are objections, we can remove it (from OCD's perspective).

Chris

From: Sharon T. Shaheen <sshaheen@montand.com>
Sent: Wednesday, May 1, 2024 1:44 PM
To: 'Adam Rankin' <AGRankin@hollandhart.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

All, Empire has a few additional revisions to the latest draft. Please see attached.

Thanks,
Sharon

Sharon T. Shaheen
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P. O. Box 2307
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Santa Fe, NM 87501
(505) 986-2678 (direct)
(505) 603-8307 (cell)

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Wednesday, May 1, 2024 8:35 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>; Sharon T. Shaheen <sshaheen@montand.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

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Adam Rankin
Partner, Holland & Hart LLP
agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

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Sent: Monday, April 29, 2024 1:37 PM
To: Sharon T. Shaheen <sshaheen@montand.com>; Adam Rankin <AGRankin@hollandhart.com>; 'Dana Hardy (dhardy@hinklelawfirm.com)' <DHardy@hinklelawfirm.com>; 'Ernest Padilla' <PadillaLawNM@outlook.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

External Email

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Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

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Sharon T. Shaheen
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Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: RE: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

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(505) 603-8307 (cell)

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Sent: Monday, April 15, 2024 1:56 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
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Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: [EXTERNAL] Re: Goodnight/Empire Scheduling Order

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Get Outlook for iOS

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Sent: Thursday, April 11, 2024 1:40:35 PM
To: Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Adam Rankin <AGRankin@hollandhart.com>; Ernest Padilla <PadillaLawNM@outlook.com>; Sharon T. Shaheen <sshaheen@montand.com>
Cc: Tremaine, Jesse, EMNRD <JesseK.Tremaine@emnrd.nm.gov>
Subject: Goodnight/Empire Scheduling Order
When: Monday, April 15, 2024 2:00 PM-3:00 PM.
Where: Microsoft Teams Meeting

External Email

I ask that folks circulate their edits, or preferable a single document edited by all, prior to the meeting. I think that will expedite matters.

If anyone has a conflict with this, please pitch with new times. It appears Adam, Dana, and I have flexibility so input from Ernie and Sharon would be helpful.

Chris

_____

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 236 095 606 357

Passcode: Pt9XgQ

Dial-in by phone

+1 505-312-4308,,51708751# United States, Albuquerque

Find a local number

Phone conference ID: 517 087 51#

For organizers: Meeting options | Reset dial-in PIN

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENT OIL POOL WITHIN THE EUNICE MONUMENT SOUTH UNIT AREA, LEA COUNTY, NEW MEXICO. **CASE NO. 24277**

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO. **CASE NO. 24278**

APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO **CASE NOS. 23614-23617**

APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO **CASE NOS. 24018-24027**

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO. **CASE NO. 23775**

[PROPOSED] PRE-HEARING ORDER

This Pre-Hearing Order follows the status conference held on May 9, 2024 before the Oil Conservation Commission. The above-referenced matters shall proceed as follows:

1. These matters will be ~~heard~~heard, and evidence presented, on September 23-27, 2024 beginning at 9 a.m. If additional hearing days are needed the Commission and parties will confer on additional hearing dates.

2. Goodnight Midstream shall file its motion regarding scope of the hearing no later than May 23, 2024; responses shall be filed by June 6, 2024; and replies shall be filed by June 13, 2024.

3. The parties shall disclose their witnesses, each witness's particular area of expertise, and identify the subject matter of each witness's anticipated testimony, by Monday, July 8, 2024.

4. The last day for issuance of subpoenas, including subpoenas for witness depositions in advance of hearing, shall be Monday, July 19, 2024.

5. ~~Other motions, including motions~~Motions to Ceompel, shall be filed by Monday, August 12, 2024. Responses will be due by Thursday, August 22, 2024. Replies shall be filed by August 30, 2024. Rulings shall be made pursuant to 19.15.4.16.C NMAC.

6. Written direct testimony and exhibits shall be filed Monday, August 26, 2024. The parties agree to provide copies of documents -that are (1) within the respective party's possession, custody, or control, ~~and~~ (2) upon which each party (including their witnesses) relied in preparation for the merits hearing and ~~those documents~~(3) referenced in the direct testimony and exhibits within one week of a request for such documents, without a subpoena.

7. Dispositive motions shall be filed no later than Monday, August 26, 2024. Responses will be due 2 weeks after service of the dispositive motion and, in any event, no later than Monday, September 9, 2024. Replies will be due 1 week after service of the response and, in any event, no later than Monday, September 16, 2024. The Commission shall hear all outstanding motions at its September 19, 2024 regularly scheduled meeting.

8. Pre-hearing statements shall be filed Monday, September 9, 2024 and shall include a list of issues common to all of the applications and a list of issues unique to any specific application.

9. Rebuttal testimony and exhibits shall be filed Monday, September 9, 2024. The parties agree to provide copies of documents that are (1) within the respective party's possession, custody, or control, (2) ~~and~~ upon which each party (including their witnesses) relied in preparation for the merits hearing, and ~~those documents~~ (3) referenced in the rebuttal testimony and exhibits within one week of a request for such documents, without a subpoena.

10. Objections to testimony and exhibits shall be filed no later than Monday, September 16, 2024.

11. Hearing, if any, on any unresolved ~~pending dispositive and outstanding~~ motions shall be held at the start of the evidentiary hearing.

Commented [CM1]: Added this for clarity. I'm not married to it, if there are concerns.

12. Extensions to the foregoing deadlines and dates, including hearing continuances, may be granted by the Division Director by agreement of the parties or on a motion for good cause shown.

DONE at Santa Fe, New Mexico on the _____ day of _____, 2024.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

_____
Greg Bloom, Commissioner

_____
William Ampomah, Commissioner

_____
Dylan Fuge, Chair

31963642_v1

EXHIBIT F

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7767 TO EXCLUDE THE SAN ANDRES FORMATION FROM THE EUNICE MONUMENT OIL POOL WITHIN THE EUNICE MONUMENT SOUTH UNIT AREA, LEA COUNTY, NEW MEXICO.	**CASE NO. 24277**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC TO AMEND ORDER NO. R-7765, AS AMENDED TO EXCLUDE THE SAN ANDRES FORMATION FROM THE UNITIZED INTERVAL OF THE EUNICE MONUMENT SOUTH UNIT, LEA COUNTY, NEW MEXICO.	**CASE NO. 24278**
APPLICATIONS OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELLS LEA COUNTY, NEW MEXICO.	**CASE NOS. 23614-23617**
APPLICATIONS OF EMPIRE NEW MEXICO LLC TO REVOKE INJECTION AUTHORITY, LEA COUNTY, NEW MEXICO.	**CASE NOS. 24018-24027**
APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403 TO INCREASE THE APPROVED INJECTION RATE IN ITS ANDRE DAWSON SWD #1, LEA COUNTY, NEW MEXICO.	**CASE NO. 23775**
APPLICATION OF GOODNIGHT PERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**CASE NO. 24123** **ORDER NO. R-22869-A**

GOODNIGHT'S OBJECTIONS AND RESPONSES TO EMPIRE'S SUBPOENA DUCES TECUM DATED JUNE 3, 2024

Pursuant to Rules 1-026, 1-034, and 1-045 NMRA, Goodnight Midstream Permian, LLC ("Goodnight"), by and through undersigned counsel, hereby serves these responses and objections

to Empire New Mexico, LLC's, Subpoena, issued by the New Mexico Oil Conservation Commission on June 3, 2024 (the "Subpoena").

PRELIMINARY STATEMENT

By agreement between counsel for Goodnight and counsel for Empire: (1) Goodnight need not produce documents already publicly available, although in good faith, where it can easily point to such records, Goodnight has done so; (2) as to Request No. 31, Goodnight will not respond to subparts b, c, or d; (3) these objections and responses are served timely on or before July 8, 2024, during which time Goodnight is also entitled to file a motion for protective order or to quash this Subpoena.

Where Goodnight's responses indicate documents will be produced, Goodnight has and will conduct a reasonable search of the paper and electronic files reasonably likely to contain responsive and non-privileged information and will produce copies of non-privileged responsive documents in a reasonably usable form.

Goodnight submits these responses and objections without waiver of any right to object to any requested information or documents and without affirming or denying any conclusory or argumentative statements made by Empire in the subpoena requests. Goodnight advises Empire that its responses and document production are based upon the knowledge, information, and belief that it has acquired to the present date. These responses and objections, and any subsequent document production are, therefore, subject to supplementation. Pursuant to the applicable provisions of the New Mexico Rules of Civil Procedure and any other applicable rules, Goodnight reserves its right to amend these responses, assert additional objections, and supplement any subsequent document production, if deemed necessary in its discretion, to respond to these requests.

GENERAL OBJECTIONS

1. Goodnight objects to these requests on the basis and to the extent that they seek documents or information of a non-technical nature outside the scope of permissible discovery as set forth in the June 4, 2024 *Order Partially Granting Empire New Mexico LLC's Objections to and Motion to Quash Goodnight Midstream Permian, LLC's Subpoena Duces Tecum* (the "Discovery Order"), now amended in the July 2, 2024 *Amended Order Partially Granting Empire New Mexico LLC's Objections to and Motion to Quash Goodnight Midstream Permian, LLC's Subpoena Duces Tecum* (the "Discovery Order"), issued in Case Nos. 24278, 24277, 23614-23617, 24018-24027, and 23775. In that Discovery Order, the Commission, in part, set forth the following ruling:

> As a general ruling on all requests:
>
> 1. In light of Empire's reliance on orders dating back to 1984 in its pending motion to dismiss, the lack of temporal limitation in Goodnight's requests is not unreasonable.
>
> 2. To minimize the burden on responding to the subpoena, Empire may properly withhold any documents otherwise responsive to these requests that it determines in good faith are subject to attorney client or attorney work-product privilege without the necessity of creating a privilege log.
>
> 3. Goodnight shall sign a confidentiality and nondisclosure agreement that further mandates destruction after the resolution of these cases of all documents produced by Empire that it asserts constitute trade or proprietary secrets.
>
> 4. Any documents or other items responsive to requests in the subpoena that are not quashed by this order shall be produced within fourteen (14) days of the date of this order.
>
> . . .
>
> With respect to specific requests, the Chairman rule[d] as follows:
>
> . . .
>
> **Request No. 8:** This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its estimates as described in this request. In light of Empire's representation that it will produce all such reports,

this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in such estimates.

Request Nos. 7 and 9: These requests do not appear reasonably calculated to provide relevant discovery on the technical issues in these cases, but on Empire's financial considerations for acquiring its working interest in the EMSU. These requests are hereby quashed.

Request No. 10: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its plans for development as submitted to the New Mexico State Land Office. In light of Empire's representation that it will produce all such plans, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in its development and submission of such plans.

Request No. 11: This request is unduly burdensome with respect to any non-technical analysis that Empire relied upon in its reports as submitted to the Division. In light of Empire's representation that it will produce all such reports, this request should be limited to any other documents that reflect technical analysis as relied upon by Empire in its development and submission of such reports.

. . .

Request Nos. 14 -17: The motion is denied with respect to these requests. The Chairman notes that these requests seek purely technical information relevant to the issues, and notes that the scope of the issues before the Commission are currently broader than as characterized by Empire, specifically, as noted at page 7 of Goodnight's response to Empire's motion to dismiss in case nos. 24277 and 24278.

Discovery Order, pp. 2-3. Although Goodnight sought a reconsideration of a narrow portion of that Discovery Order (as to requests Nos. 7-9), the oral ruling by the Commission at its June 20, 2024 did not displace any portion of this general ruling as to all requests, and as to requests Nos. 7-9 only determined that Request No. 8 did, in fact, seek "relevant discovery on the technical issues in these cases" and thus required a response from Empire.

Goodnight recognizes that the instant Subpoena was issued on June 3, 2024, prior to the Discovery Order on June 4, 2024, as amended on July 2, 2024; even so, Empire asserts that these requests are bound by the Discovery Order. Goodnight, thus, also generally objects to the requests

in this Subpoena to the extent they seek documents and information clearly outside the scope of permissible discovery based on the above rulings in the Discovery Order.

2. Goodnight objects to these requests to the extent each seeks information or documents protected by attorney-client privilege, work-product doctrine, and/or any other applicable doctrine, or information that constitutes confidential and proprietary information or trade secrets. *See* Rule 1-026(B)(1) NMRA (discovery limited to matters not privileged); Rule 1-026(B)(4) NMRA (work product not discoverable); Rule 11-503 (lawyer-client and joint defense privilege); Rules 1-026(C)(7) (protective order may prevent or limit disclosure of trade secrets); Rule 11-508 (party may object and refuse to disclose trade secrets); *Wallis v. Smith*, 2001-NMCA-017, ¶ 19, 22 P.3d 682 (timely privilege objection bars discovery until discovery dispute is resolved). This is a categorical assertion of privilege which specifically covers communications that were sent to or from, or at the direction of, Goodnight's outside and in-house counsel either seeking or providing legal advice or collecting information and preparing work product in anticipation of litigation. Although these objections are incorporated in response to each request to which they pertain, to the extent any document or data subject to these privileges or immunity is inadvertently disclosed, this objection is stated in order to avoid any waiver of that privilege or immunity. All documents are produced on the condition that all copies of any inadvertently produced documents subject to any privilege or immunity will be returned or destroyed. Consistent with Commission's ruling in the Discovery Order regarding the burden of producing a privilege log in the scope of these proceedings, Goodnight relies on the Discovery Order to mean that Goodnight, like Empire, need not produce a privilege log as to claims of privilege or immunity in response to this Subpoena. *See* Discovery Order, p. 1, ¶ 2.

3. To the extent that Empire's requests seek production of electronic or magnetic data and/or electronically stored information ("ESI"), Goodnight makes the following objections:

a. Goodnight objects to the production of all metadata associated with ESI produced in response to Empire's requests, as production of all metadata for all ESI is overly broad, unduly burdensome, and may contain privileged information;

b. Goodnight objects to the production of electronically stored documents or information in native format or near-native format, as production in these formats precludes the use of Bates numbers or other methods of specifically marking electronic documents for identification and authentication purposes, precludes the ability to redact privileged information from electronic documents to be produced, and does not permit the application of proper confidentiality designations; and

c. Goodnight objects to the production of electronically stored documents or information contained in legacy systems or disaster recovery or archival backup tapes, and to production of deleted or fragmented data, on the grounds that such information is not reasonably available in the ordinary course of business.

Consistent with Rule 1-034, Goodnight will produce documents and information "in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable." NMRA 1-034(B)(2). Goodnight generally objects to the extent Empire seeks to require production of ESI in any other form under any request, given that the Subpoena fails to "specify the form or forms for producing electronically stored information." *Id.*

4. Goodnight objects to these requests to the extent they seek to impose upon Goodnight any requirements beyond those established by the New Mexico Rules of Civil Procedure, by the statutes and regulations governing these proceedings in front of the Commission (specifically including NMSA 1978, § 70-2-8 and NMAC § 19.15.4.16.A), or by the Discovery Order or other rulings set forth by the Commission in the scope of these proceedings.

5. Goodnight objects to these requests to the extent they seek information pertaining to wells and matters outside the scope of the September 23-27, 2024 hearing as limited by the Commission. At the Commission's June 20, 2024 meeting, the Commission orally ruled the scope of the September 23-27 hearing would be limited to applications involving Goodnight's salt-water injection ("SWD") wells located within the Eunice Monument South Unit ("EMSU"). That ruling was memorialized in the Commission's July 2, 2024 *Joint Order on Goodnight Midstream Permian L.L.C.'s Motion to Limit Scope of Hearing on Cases within the Eunice Monument South Unit and the Oil Conservation Motion Concerning the Scope of the Evidentiary Hearing set for September 23-27, 2024* (the "Scope Order"). The Scope Order provided in part that:

> . . .
>
> 2. At said hearing, the parties shall submit all evidence, testimony, and legal argument on the issue of the existence, extent of and possible interference with a residual oil zone the Eunice Monument South Unit ("EMSU") by produced water injection activities undertaken by Goodnight.
>
> 3. Such evidence, testimony, and legal argument shall be limited to applications and wells by Goodnight or by Empire New Mexico LLC within the EMSU and shall include the following cases: a. Commission Case No. 24123;
> b. Division Case No. – 23775;
> c. Division Case Nos – 23614-23617;
> d. Division Case Nos – 24018-24020, and 24025; and

Scope Order, p. 2. Given that Empire's Subpoena was issued under the auspices of that hearing (*see* Commission's June 3, 2024 Pre-Hearing Order ruling on subpoenas within the scope of the above-captioned matters) Empire is bound by that ruling related to the information sought in its

Subpoena. Information regarding wells or matters not pertaining to technical issues underlying the factual disputes not pertaining to Goodnight's SWD wells within the EMSU, thus, are outside the scope of the evidentiary hearing. Discovery aimed at non-EMSU matters, thus, is not likely to lead to the discovery of admissible evidence.

6. Finally, Goodnight is filing a motion for protective order and to partially quash Empire's Subpoena for the reasons set forth above and as further set forth in said motion. Therefore, pursuant to Rule 1-010(C) NMRA, Goodnight incorporates the arguments in support of its motion for protective order and to partially quash this subpoena as though set forth as an objection, herein, and generally objects based on those arguments.

Paragraphs 1-6 of these General Objections shall hereafter be referred to as the "**General Objections**." The foregoing General Objections and Preliminary Statement are hereby incorporated in response to each request, below.

RESPONSES AND OBJECTIONS

1. All modeling of proposed injection operations or of existing disposal within the Eunice Monument South Unit ("Unit").

RESPONSE: Subject to and without waiving the general objections, Goodnight responds: None. To the extent any modelling is completed by Goodnight's experts, those will be produced according to the deadlines set forth in the Pre-Hearing Order, dated June 3, 2024 (the "Scheduling Order"). Goodnight reserves its right to supplement this response should any responsive documents be identified.

2. All economic projections for the proposed injection operations underlying the Unit and all disposal wells operated by Goodnight Midstream Permian, LLC ("Goodnight").

RESPONSE: Goodnight objects to this request as set forth in the general objections. Goodnight further objects that this request seeks internal and external financial information about Goodnight's operations. As such, the information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the

San Andres formation within the EMSU or whether Goodnight's injection activities have interfered with any correlative rights of Empire. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority "over all matters relating to the conservation of oil and gas . . .") (relied upon by Empire in its Motion to Quash Goodnight's March 5, 2024 subpoena for this very point). In sum, Empire asks for the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order. It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

3. Dynamic interaction studies or other studies between produced water and the San Andres formation water, including water compatibility studies of Delaware Basin injected water with San Andres formation water.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified.

4. Aside from the water analysis contained in Goodnight's applications, provide water chemistry and analysis of produced water proposed to be injected including:

Dissolved solids,
pH,
suspended solids,
temperature,
specific gravity, and
dissolved gasses

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight has already produced water analysis information to Empire. *See* Goodnight Bates_00001 (produced on or about September 27, 2023).

5. Raster images of open hole logs run on the following wells:

a. Andre Dawson SWD No. 1 (API #30- 025-50634);
b. Ernie Banks SWD No. 1 (API #30-025-50633);
c. Pedro SWD No. 1 (API #30-025-50079).

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight will produce case hole logs on the Andre Dawson SWD No. 1 (API #30- 025-50634) and on the Ernie Banks SWD No. 1 (API #30-025-50633). Goodnight reserves its right to supplement this response should any responsive documents be identified.

6. Summaries, including but not limited to internal and external correspondence and emails, memoranda, assessments, and projections that address, and justification for installation of the Llano Produced Water Pipeline System constructed in Lea County, NM.

RESPONSE: Goodnight objects to this request as set forth in the general objections and further objects as specifically set forth hereafter. This request seeks "[s]ummaries, including but not limited to internal and external correspondence and emails, memoranda, assessments, and projections that address, and justification for installation of the Llano Produced Water Pipeline System constructed in Lea County, NM". The information sought is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the San Andres formation within the EMSU or whether Goodnight's injection activities have interfered with any correlative rights of Empire. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority "over all matters relating to the conservation of oil and gas . . .") (relied upon by Empire in its Motion to Quash Goodnight's March 5, 2024 subpoena for this very point). In sum, Empire asks the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order.

The information sought regarding the "justification for installation of the Llano Produced Water Pipeline System" is has no clear connection issues in dispute. Indeed, the request is objectionably broad and vague, such that counsel is left to guess about what would or would not be responsive. *See Zuniga v. TrueAccord*, 2019 WL 6528759, *3 (D.N.M. December 4, 2019) (Discovery requests must be specific so that the information sought is clear, not leaving opposing counsel "to ponder and to speculate" as to what is being requested) (citations omitted). It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

7. Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments, that address justification for the purchase of the following well:

   a. Penroc State E Tr 27 SWD #2 (30-025-26491)

RESPONSE: Goodnight objects to this request as set forth in the general objections (specifically including but not limited to the EMSU Scope objection), and further objects as specifically set forth hereafter. Goodnight objects that this well is not located within the EMSU and thus is outside the scope of these proceedings – the discovery sought is not likely to lead to the discovery of admissible information. Goodnight further objects that "summaries . . .internal and external correspondence, emails, memoranda, and assessments, that address justification *for purchase* of the" Penroc is not a request for discovery aimed at discovering relevant information probative of the issues in front of the Commission. Moreover, the request is not aimed at any technical analysis of the San Andres formation within the EMSU. It is therefore outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

8. Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments, that address, justification for the drilling of the following wells:

a. Andre Dawson SWD #1 (30-025-50634);
b. Ernie Banks SWD #1 (30-025-60633);
c. Nolan Ryan SWD #1 (30-025-45349);
d. Pedro SWD #1 (30-025-50079);
e. Snyder SWD #1 with name change to Ryno SWD #1 (30-025-43901);
f. Scully State SWD #1 (30-025-46398);
g. Sosa SA 17 SWD #2 (30-025-47947);
h. Ted 28 SWD #1 (30-025-44386);
i. Yaz 28 SWD #1 (30-025-46382).

RESPONSE: Goodnight objects to this request as the information that justifies drilling of those wells is publicly available information maintained by the New Mexico Oil Conservation Division. To the extent Empire is seeking different information or additional document, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3. Goodnight further objects to this request on the basis that it seeks information pertaining to wells that are no longer the subject of the September 23-27 hearing because they are outside of the EMSU, and thus the discovery sought is not likely to lead to the discovery of admissible information. Finally, Goodnight objects to this request on the basis that "Summaries, including but not limited to internal and external correspondence and emails, memoranda, and assessments" are categories of information that do not address technical issues related to the San Andres formation within the EMSU – as such, this request is outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

9. All bottomhole pressure information acquired in the Grayburg and San Andres intervals on all 10 wells in items No. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. To the extent any information is developed by Goodnight's experts, such information will be produced according to the deadlines set forth in Scheduling Order. Goodnight will produce shut-in fluid levels for the EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

10. All Grayburg and San Andres formations reservoir pressure information and data on other wells in Lea County used to justify construction of Llano pipeline network.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. To the extent any information is developed by Goodnight's experts, such information will be produced according to the deadlines set forth in Scheduling Order. Goodnight reserves its right to supplement this response should any responsive documents be identified.

11. Daily water injection rates and wellhead pressures for all wells in items Nos. 7 and 8 since start of injection.

RESPONSE: Goodnight objects on the basis that this request is redundant in that Goodnight has already produced daily water injection rates and well pressures for the Andre Dawson SWD No. 1 and the Ernie Banks SWD No. 1.

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide daily water injection volumes and average wellhead injection pressures for EMSU wells to the extent not already provided. Goodnight reserves its right to supplement this response should any responsive documents be identified.

12. All sidewall or rotary core information obtained on any of the wells in items Nos. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified. Goodnight reserves its right to supplement this response should any responsive documents be identified.

13. All interpreted logs which calculate water saturation on the wells in items Nos. 7 and 8.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: None. The only interpreted logs that Goodnight has are those being developed by its experts in the course of these proceedings, which will be provided in due course under the requirements of the Pre-Trial Order. Goodnight reserves its right to supplement this response should any responsive documents be identified. Goodnight reserves its right to supplement this response should any responsive documents be identified.

14. All mud logs taken on wells in items No. 7 and 8.

RESPONSE: Goodnight objects on the basis that this request is redundant and that Goodnight has already produced mud logs for all the EMSU wells. Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight has no additional EMSU-well mudlogs. Goodnight reserves its right to supplement this response should any responsive documents be identified.

15. All documents relating to the calculation, determination or redetermination by Goodnight, or on its behalf by a third party, of the oil and gas reserves within the San Andres formation underlying the Unit and within two miles of the exterior boundaries of the Unit.

RESPONSE: Goodnight objects to this discovery request on grounds that the information being requested is overly broad because a discovery request that seeks all information "relating to" a subject matter is facially overbroad and unduly burdensome. *See, e.g., Cotracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 665 (D. Kan. 1999) (holding that omnibus phrase "relating to" rendered discovery request facially overbroad and unduly burdensome); *Robbins v. Camden City Board of Education*, 105 F.R.D. 49, 50 (D.N.J. 1985) (document request for all documents that "refer or relate" to specific subject was too broad and ambiguous to meet the "reasonable particularity" standard of Fed. R. Civ. P. 34); *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998) (discovery requests that seek "all documents" or "all documents relating to" a subject matter are facially overbroad and unduly burdensome); *Dean v. Superior Court In & For Maricopa County*, 324 P.2d 764, 768 (Ariz. 1958) ("A blanket request for all written statements, all memoranda and all other documents, is not sufficient because it lacks specificity and is too sweeping and undetailed to comply with requirements as to designation."); *Fallon v. CBS Inc.*, 124 A.D.2d 697, 697-98 (N.Y. App. 1986) (holding discovery request broadly seeking all communications and documents is "palpably improper and cannot be sustained"); s*ee also Pope*, 1998-NMCA-103, ¶ 10 (stating that New Mexico courts may look to federal law for guidance when construing rules of civil procedure).

Goodnight has not performed any formal reserve reporting analysis because there is no indication of economically recoverable hydrocarbons in the San Andres formation within the EMSU. As

stated below, Goodnight has provided the swab tests (showing no economic oil) on the completed EMSU wells. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Subject to and without waiving the general objections, Goodnight responds: Goodnight has already produced swab tests related to the completed EMSU wells. Goodnight is presently developing further analyses on these issue through its experts in the course of these proceedings, which will be provided in due course under the requirements of the Pre-Trial Order. Goodnight reserves its right to supplement this response should any responsive documents be identified.

16. All water analyses of injected water into the San Andres formation for each well in items Nos. 7 and 8.

RESPONSE: Goodnight objects that this request is wholly redundant of Request No. 4. Any documents responsive to this request are referenced in the response to Request No. 4. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight's responsive documents are referred to in response to Request No. 4. Goodnight reserves its right to supplement this response should any responsive documents be identified.

17. Provide water samples (in sample bottles) for injected water into wells in items No. 7 and 8 and #3 so that Empire can have them analyzed.

RESPONSE: Goodnight objects based on the general objections. Goodnight further objects to this request as redundant of the information already produced in response to Request No. 4. As such, this request is unduly burdensome, and harassing. A purely redundant and unnecessarily burdensome request is per se harassing. *See* Rule 1-026(B) NMRA ("The Court shall limit use of discovery methods . . . if it determines that the burden or expense of the proposed discovery outweighs its likely benefit[.]"). Moreover, this request is not likely to lead to the discovery of admissible information. *Id.* This request seeks no new information different than the water analyses previously provided by Goodnight and referenced in response to Request No. 4. Goodnight thus objects.

18. Top of structure maps for Grayburg and San Andres intervals with subsea elevation for each well used to generate Goodnight's structure map.

RESPONSE: Subject to and without waiving the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide a top of structure map with data points for the mapping. Goodnight reserves its right to supplement this response should any responsive documents be identified.

19. List of chemicals and monthly chemical bill for Wrigley SWD facility.

RESPONSE: Goodnight objects to producing any bill because a bill does not provide any new or different technical information relevant to the scope of these proceedings as already determined by the Commission. Moreover, a bill is not the sort of technical information that falls within the scope of permissible discovery in this matter. Goodnight reserves its right to supplement this response should any responsive documents be identified.

Subject to and without waiving the above objection and the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds that it will provide safety data sheets regarding chemicals used at the Wrigley SWD facility.

20. Facility drawing with list of equipment at Wrigley SWD facility.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing. To the extent Empire is seeking information or documents that bear on technical matters, it is not apparent based upon the request made: Goodnight's counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Subject to and without waiving the above objection and the general objections, Goodnight responds that it will provide a drawing of the Wrigley SWD facility. Goodnight reserves its right to supplement this response should any responsive documents be identified.

21. All records of separator or tank cleanouts at Wrigley SWD facility.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing. To the extent Empire is seeking information or documents that bear on technical matters, it is not apparent based upon the request made: Goodnight's counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Subject to and without waiving the above objection and the general objections, Goodnight responds that it will provide records of tank cleanouts at the Wrigley SWD facility. Goodnight reserves its right to supplement this response should any responsive documents be identified.

22. Documents, correspondence, e-mails, data, analyses, reports, or summaries that address, reflect on, or indicate concerns for the existence or non-existence of hydrocarbons in the San Andres formation within the Unit.

RESPONSE: Goodnight objects that this request is duplicative of Empire's Request No. 1 in its September 19th, 2023 subpoena to Goodnight (issued in Div. Case Nos. 23614-17). Request No. 1 in that subpoena provided as follows:

> 1. All documents, communications, correspondence, emails, data, analyses, reports, and summaries, including but not limited to internal and external correspondence, memoranda, and assessments, that address, reflect on, or concern the existence or non-existence of hydrocarbons in the San Andres formation within the Eunice Monument South Unit, including any logs, reports, or other data providing downhole information.

Any documents responsive to this request were produced in response to that request. To the extent Empire is seeking different information or additional documents, counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. *See Zuniga*, 2019 WL 6528759, *3.

Goodnight further objects to the scope of this request, to the extend it seeks non-technical information that is not reasonably calculated to lead to the discovery of admissible evidence in these Commission cases – it is not only aimed at technical documents, information, or data underlying whether there are economically recoverable hydrocarbons in the San Andres formation within the EMSU or whether Goodnight's injection activities have interfered with any correlative rights of Empire. *See* NMSA 1978, § 70-2-6 (Commission and Division have authority "over all matters relating to the conservation of oil and gas . . .") (relied upon by Empire in its Motion to Quash Goodnight's March 5, 2024 subpoena for this very point). In sum, Empire asks for the Commission to allow it discovery of information that Empire asked the Commission to prevent Goodnight from discovering. This request is squarely outside the scope of permissible discovery as set forth in the Discovery Order. It is therefore, to the extent it goes beyond the Scope Order and the Discovery Order, outside the scope of the hearing in this matter and outside the scope of permissible discovery – instead, it is overbroad and unduly burdensome.

Subject to and without waiving the above objections or the general objections (specifically including but not limited to the EMSU Scope objection), Goodnight responds: Goodnight's responsive documents were produced in response to Request No. 1 of the September 19, 2023 subpoena. Goodnight's prior production of documents related to the existence/non-existence of hydrocarbons in the San Andres formation within the EMSU are consistent with and supported by the reality that that San Andres formation has long been used as a designated disposal zone with the EMSU operator's participation and consent. Goodnight reserves its right to supplement this response should any responsive documents be identified.

23. All correspondence, emails, contracts or any other written materials by and between the Millard Deck Estate and its representatives, managers or employees, and Goodnight.

RESPONSE: Goodnight objects to this request because the information sought does not appear likely to lead to the discovery of admissible information because it does not pertain to technical information bearing on any issues before the Commission within the scope of this hearing.

24. Please produce all well logs for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000'.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See* Scope Order.

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that it will provide well logs for the EMSU wells to the extent they have not already been produced. Goodnight reserves its right to supplement this response should any responsive documents be identified.

25. All side wall or rotary core information for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000'.

RESPONSE: Subject to and without waiving the general objections, Goodnight responds: None. Goodnight reserves its right to supplement this response should any responsive documents be identified.

26. All mud logs for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000'.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See* Scope Order.

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that it has already provided well logs for the EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

27. All cuttings and chromatograph data for wells operated by Goodnight within two miles of the exterior boundaries of the Unit that were drilled below 4000'.

RESPONSE: Goodnight objects that this request is duplicative of Request No. 14 as to EMSU wells. Goodnight further objects to this request to the extent it seeks information regarding wells outside the boundary of the EMSU because that information is not likely to lead to the discovery of admissible information. *See* Scope Order.

Subject to and without waiving the forgoing objections or the general objections, Goodnight responds that any cuttings and chromatograph data for EMSU wells is contained in the mud logs already being produced.

28. All geochemical data for the Grayburg and San Andres formations showing the potential seal or lack thereof.

RESPONSE: Goodnight objects that this request is overbroad and vague. To the extent that Empire is requesting water chemistry data showing the difference between water chemistry in the San Andres formation from water chemistry in the Grayburg formation, Goodnight objects on the basis that Goodnight has already produced swab tests. To the extent Empire is seeking other information or documents, it is not apparent based upon the request made: Goodnight's counsel is left to guess at what Empire might be seeking - the request is objectionably broad and vague. See Zuniga, 2019 WL 6528759, *3.

Subject to and without waiving the general objections, Goodnight responds that is has no new documents to produce beyond the swab tests previously produced for EMSU wells. Goodnight reserves its right to supplement this response should any responsive documents be identified.

29. All San Andres formation top picks and or proof of seal from cross-sections or other calculated methods.

RESPONSE: Goodnight objects to this request because "San Andres formation top pics . . .from cross-sections or other calculated methods" is vague, such that counsel does not understand what Empire is requesting. Goodnight further objects to this request because the other alternative, "San Andres top picks . . . from cross-sections or other calculated methods" is also vague, such that counsel does not understand what Empire is requesting. Indeed, the request is objectionably broad and vague, such that counsel is left to guess about what would or would not be responsive. *See Zuniga*, 2019 WL 6528759, *3 (Discovery requests must be specific so that the information sought is clear, not leaving opposing counsel "to ponder and to speculate" as to what is being requested) (citations omitted).

Subject to and without waiving the forgoing objection or general objections, Goodnight responds that it will produce (1) a map of Goodnight's formation top-picks for both the San Andres and Grayburg inclusive of data points within the EMSU, and (2) a document (called "EMSU SADR Picks") providing a list of Goodnight's top picks for the San Andres formations within the EMSU. Goodnight further responds that it has already produced fluid levels in the San Andres SWD EMSU wells that show the proof of seal. Goodnight reserves its right to supplement this response should any responsive documents be identified.

30. Please produce all documents and data supporting Preston McGuire's representations of formation tops in paragraphs 12-15 of his Exhibit B of Goodnight's exhibits in Case Nos. 23614-23617 and that the San Andres formation underlying the Unit is a "depleted formation".

RESPONSE: Subject to and without waiving the forgoing objection or general objections, Goodnight responds that it will produce the documents identified as supporting Goodnight's Exhibit B-9 in Case Nos. 23614-23617, which includes the San Andres water supply well volumes from the OCD case document 08397_4659 EMSU Tech Committee Report, the OCD case document 08397_4658 EMSU Tech Committee Report, and the years 1989 to 1994 reconstruction from well tests and Tech Committee Charts.

31. With respect to each person Goodnight may call as an expert witness at hearing, please provide:

a. the name, address, and qualifications of the expert;
b. the subject matter on which the expert is expected to testify;
c. the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;
d. any reports prepared by the expert regarding the pending action;
e. a list of all publications authored by the witness within the preceding ten (10) years; and
f. a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

RESPONSE: Subject to and without waiving the general objections, Goodnight responds that it will produce documents related to sub-requests Nos. A, E, and F.